

**Introduced by Senator Bowen  
(Principal coauthor: Senator Morrow)**

February 22, 2005

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An act to add Section 17538.43 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 833, as introduced, Bowen. Unsolicited advertising faxes.

Existing state law imposes various requirements and prohibitions on different forms of advertising. A violation of the provisions governing advertising is a crime.

This bill would make it unlawful for a person or entity, if located in California or if the recipient is located in California, to use any device, or cause any other person or entity to use a device to send, an unsolicited advertisement to a telephone facsimile machine. The bill would authorize the recipient of an unsolicited advertising fax to bring an action for a violation of these provisions for injunctive relief, actual damages or liquidated damages of \$500 per violation, whichever is greater, or both injunctive relief and damages, and, if the violation was willful, would authorize a court to award treble damages. The bill would also make it unlawful for a person or entity, if located in California or the recipient is located in California, to initiate a facsimile communication using a machine that does not provide specified identification, or to use a device to send a message via a telephone facsimile machine unless the message is clearly marked with certain identifying information.

Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17538.43 is added to the Business and  
2 Professions Code, to read:  
3 17538.43. (a) As used in this section, the following terms  
4 have the following meanings:  
5 (1) "Telephone facsimile machine" means equipment that has  
6 the capacity to do either or both of the following:  
7 (A) Transcribe text or images, or both, from paper into an  
8 electronic signal and to transmit that signal over a regular  
9 telephone line.  
10 (B) Transcribe text or images, or both, from an electronic  
11 signal received over a regular telephone line onto paper.  
12 (2) "Unsolicited advertisement" means any material  
13 advertising the commercial availability or quality of any  
14 property, goods, or services that is transmitted to any person  
15 without that person's prior express invitation or permission.  
16 (b) (1) It is unlawful for a person or entity, if either the person  
17 or entity or the recipient is located within California, to use any  
18 telephone facsimile machine, computer, or other device to send,  
19 or cause another person or entity to use such a device to send, an  
20 unsolicited advertisement to a telephone facsimile machine.  
21 (2) In addition to any other remedy provided by law, including  
22 a remedy provided by the Telephone Consumer Act (47 U.S.C.  
23 Sec. 227 and following), a person or entity may bring an action  
24 for a violation of this subdivision seeking the following relief:  
25 (A) Injunctive relief against further violations.  
26 (B) Actual damages or liquidated damages of five hundred  
27 dollars (\$500) per violation, whichever amount is greater.  
28 (C) Both injunctive relief and damages as set forth in  
29 subparagraphs (A) and (B).  
30 If the court finds that the defendant willfully or knowingly  
31 violated this subdivision, the court may, in its discretion, increase

1 the amount of the award to an amount equal to not more than  
2 three times the amount otherwise available under subparagraph  
3 (B).

4 (c) It is unlawful for a person or entity, if either the person or  
5 entity or the recipient is located in California, to do either of the  
6 following:

7 (1) Initiate any communication using a telephone facsimile  
8 machine that does not clearly mark, in a margin at the top or  
9 bottom of each transmitted page or on the first page of each  
10 transmission, the date and time sent, an identification of the  
11 business, other entity, or individual sending the message, and the  
12 telephone number of the sending machine or of the business,  
13 other entity, or individual.

14 (2) Use a computer or other electronic device to send any  
15 message via a telephone facsimile machine unless it is clearly  
16 marked, in a margin at the top or bottom of each transmitted page  
17 of the message or on the first page of the transmission, the date  
18 and time it is sent and the identification of the business, other  
19 entity, or individual sending the message and the telephone  
20 number of the business, other entity, or individual.

21 SEC. 2. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the  
26 penalty for a crime or infraction, within the meaning of Section  
27 17556 of the Government Code, or changes the definition of a  
28 crime within the meaning of Section 6 of Article XIII B of the  
29 California Constitution.